IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 16 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANSUKHLAL BHIMJI SATWARA

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR AK CLERK for Petitioner

MR ASHISH M DAGLI for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/03/2001

C A V JUDGEMENT

The appellant above named has preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 3.1.2000 recorded by the learned 4th Extra Assistant Judge, Junagadh in Regular Civil Appeal no.73/87 under

which the learned lower Appellate Judge dismissed the said appeal of the appellant herein and confirmed the judgment and decree dated 30.4.1986 recorded by the learned Second Joint Civil Judge (SD), Junagadh in RCS No.73/87, under which the learned trial Judge had dismissed the said suit filed by the present appellant leaving the parties to bear their own costs. The facts leading to this Second Appeal may be briefly stated as follows:

2. The appellant was working as Bus conductor in the employment of respondent at relevant point of time on 16.10.1979. He was on duty as bus conductor in a bus belonging to the respondent on Porbandar Mangrol route. The bus was checked and certain irregularities were noticed. A departmental enquiry was initiated against the appellant and the appellant was dismissed from service after following the procedure of enquiry. The appellant challenged the said order of his dismissal before the civil Court, Junagadh by filing RCS No.723/82. The said suit was resisted on behalf of the respondent and ultimately the learned trial Judge dismissed the said suit of the appellant holding that the concerned Officer had authority and jurisdiction to conduct the enquiry. The trial court also found that the Divisional Controller of the respondent Corporation had power to hear and dispose of the appeal against the departmental punishment inflicted on the appellant. The trial court also found that the order of dismissal dated 31.5.1980 and the order confirming the said dismissal in appeal were not proved to be illegal. The trial court also found that the civil court had jurisdiction to entertain the impugned dispute between the parties. On the aforesaid set of findings, the trial court dismissed the suit of the appellant.

3. Feeling aggrieved by the said judgment and decree of the trial court, the appellant preferred Regular Civil Appeal No.73/87 before the District Court, Junagadh under section 96 of the Code of Civil Procedure, 1908. The learned Assistant Judge, who heard the appeal, was pleased to dismiss the said appeal of the appellant by judgment and decree dated 3.1.2000. Feeling aggrieved by the said judgment and decree of the District Court dated 3.1.2000, the appellant has preferred this Second Appeal before this Court under Section 100 of the Code.

4. It has been mainly contended here that the issue as to jurisdiction of the Civil Court under Section 9 of the Code is a substantial question of law which requires consideration in the present matter. Other grounds have also been agitated by and on behalf of the appellant. It

is, therefore, prayed that the present appeal be allowed and the judgments and decree of the two courts below be set aside and necessary consequential decree be passed in favour of the appellant and against the respondents in terms of the reliefs prayed in the suit.

5. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the appellant himself has argued that the appellant has challenged the procedural aspect touching the standing orders of the respondent-Corporation. It is his argument that the matter relating to challenge to the Standing Order could not have been entertained by the Civil Court and, therefore, the Civil Court had no jurisdiction to entertain the suit of the appellant. When the suit was not within the jurisdiction of the Civil Court to be entertained, then naturally the District Court sitting as Court of Appeal, equally had no jurisdiction to entertain the appeal. Therefore, the judgments and decree of the two courts below may be set aside on the ground that the Civil Court had no jurisdiction to entertain the suit in question.

6. In support of the said contention, the learned Advocate for the appellant has relied upon two decisions. First is in the case of Chandrakant Tukaram Nikam v. Municipal Corporation of the City of Ahmedabad (1993 (1) GLR 684). There it has been laid down that the Labour Courts and Industrial Tribunals have exclusive jurisdiction to decide industrial disputes. It is further observed that jurisdiction of the Civil Court is impliedly taken away. Another decision relied upon by him is in the case of Rajasthan State Road Transport Corporation & Ors. v. Krishnakant & Ors. There also it has been observed that where a dispute arises from the general law of contract, i.e. where reliefs are claimed on the basis of general law of contract, a suit filed in the Civil Court cannot be said to be not maintainable, even though such dispute may also constitute an "industrial dispute" within the meaning of section 2(k) or section 2-A of the Industrial Disputes Act, 1947. It has further been observed that where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligation created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act. It is further observed that similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946, which can be called "sister enactments" to Industrial Disputes Act and

which do not provide for a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act, 1947.

6. Learned Advocate appearing on behalf of the respondent Corporation also agrees with the aforesaid submission of the learned Advocate for the appellant. Therefore, in the present matter, learned Advocates for the appellant as well as for the respondents both have come out with a case that the Civil Court had no jurisdiction to entertain the suit before it since it involves questions relating to the enforcement of the Standing Order under the aforesaid laws. It is the common argument that such question ought to have been dealt with by a Labour Court or an Industrial Tribunal and not by the Civil Court. Therefore, both of them have argued that the Civil Court had no jurisdiction to entertain the suit before it under section 9 of the Code. When the learned Advocates for both the sides have common point of argument that the Civil Court which entertained the suit of the appellant herein had no jurisdiction to entertain the suit before it, then the appeal filed by the appellant against the judgment and decree passed by the Civil Court would also be without jurisdiction and consequently, there is no question of allowing the Second Appeal filed under section 100 of the Code. In the aforesaid view of the matter, with the concurrence of the learned Advocates for the parties, it is necessary to dispose of the appeal. Learned Advocate for the appellant has argued that while disposing the appeal, this court may make observations that the appellant above-named will be at liberty to take up proper contentions before the proper courts. It is very clear that it is now the case of both the parties that the Civil Court had no jurisdiction to entertain the suit before it.

7. The learned Advocate for the appellant submits that the appellant should be at liberty to take up all the necessary contentions before the appropriate forum if and when the matter may be prosecuted there. Without expressing any opinion on merits of this submission, it may be stated that if any point is raised by the parties before any authority or forum, the said authority or the forum will naturally deal with and decide such

contentions/disputes according to law.

8. With this observation, when the parties are not at dispute, the appeal is required to be dismissed of as aforesaid. Under the aforesaid circumstances, this appeal is dismissed in light of the observations made hereinabove. No order as to costs.

Date:20.3.2001 [D P Buch, J.]
msp